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18 Sacheu Beauty, Inc.

19
20 SACHEU BEAUTY, INC.,

Case No.:

21
22 Plaintiff,

COMPLAINT

23 vs.

24 SMOOCHE, LLC. and MATTHIJS

Jury Trial Demanded

25 RICHARDUS OTTERLOO,

26
27 Defendants.

1 Plaintiff, Sacheu Beauty, Inc. (“Sacheu” or “Plaintiff”), by and through its
2 undersigned attorneys, hereby brings this action against Defendants, Smooche, LLC
3 (“Smooche”) and Matthijs Richardus Otterloo (“Otterloo”) (Collectively
4 “Defendants”), and pray to this Court for relief based on the following:

5 **INTRODUCTION**

6 1. The rise of social media and influencer affiliate marketing has created
7 a new landscape for the development and sale of counterfeit products and
8 unauthorized reproduction of protected content, leading to mass infringement
9 across the internet including on social media and on popular and emerging e-
10 commerce platforms.

11 2. This is a case about a leading beauty brand that has catapulted into
12 success due to its innovation and marketing expenditure and strategy, only to have
13 a pirate replicate its most popular product—from its formulation to its product
14 packaging, as well as using its promotional content to market the counterfeit
15 product—in an effort to free-ride off its investment and marketplace goodwill.

16 3. Sacheu is a beauty and wellness brand that has taken the industry by
17 storm due to its innovative products, distinctive and alluring product packaging
18 designs, and digital marketing strategy. In 2020, social media influencer Sarah
19 Cheung launched the brand, promoting it online to her already established fan base
20 of thousands of followers across various platforms. To this day, Cheung remains an
21 active participant in the development of the brand, products, and its promotional
22 content.

23 4. Since its launch, Sacheu and its products, including its Lip Liner
24 STAY-N product, have become among the most popular beauty products on the
25 market. It is therefore, unfortunately, no surprise that counterfeit and copycat
26 Sacheu products have permeated the market.

27 5. Upon information and belief, Smooche is a manufacturer of cosmetic
28 products, including a lip product marketed as the Stick & Stay Peel-off Lip Stain.

1 6. Smooche's Stick & Stay Peel-off Lip Stain product packaging copies
2 many of the original, unique, and distinctive elements of Sacheu's Lip Liner STAY-
3 N product packaging to create an overall appearance and commercial impression
4 that is confusingly similar to, and a trade-dress-infringing replication of, Sacheu's
5 Lip Liner STAY-N product packaging, that consumers are likely to be—and in
6 some instances, already have been—confused, mistaken, and/or deceived into the
7 false belief that Smooche's Stick & Stay Peel-off Lip Stain product is created or
8 authorized by Sacheu.

9 7. Furthermore, upon information and belief, Smooche is using the image
10 and likeness of Sacheu's founder and influencer, Sarah Cheung, in illicit and
11 targeted digital marketing efforts, for the purpose of creating further marketplace
12 confusion and deception among customers of Sacheu, and ultimately usurping sales
13 from Sacheu and capturing market share through unfair and illicit means in a highly
14 competitive beauty market.

15 8. Upon information and belief, Defendant Otterloo, the founder and sole
16 owner of Defendant Smooche, has personally directed, controlled, ratified,
17 participated in and/or been the moving force behind the infringing activities of
18 Defendant Smooche with respect to the subject matter of this litigation.

19 9. Accordingly, Plaintiff brings this action against Defendants, in law and
20 in equity for trade dress infringement, false designation of origin, and unfair
21 competition arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, for related
22 claims of trade dress infringement, unfair competition, injury to business reputation
23 and deceptive trade practices under the laws of the State of California and the
24 common law, and for violation of rights of publicity under the laws of the State of
25 California and the common law.

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THE PARTIES

10. Plaintiff, Sacheu Beauty, Inc., is a corporation organized and existing
1 under the laws of the Delaware, with a principal place of business at 12001 Ventura
2 Place, Suite 330, Studio City, California 91604.

11. Upon information and belief, Defendant, Matthijs Richardus Otterloo
5 is a resident of the State of New York.

12. Upon information and belief, Defendant, Smooche, LLC is a limited
7 liability company formed by Otterloo in March 2024, organized and existing under
8 the laws of the Delaware, with a registered agent address at 611 South DuPont
9 Highway Suite 102, Dover, Delaware 19901. Upon information and belief,
10 Smooche maintains a continuous business presence in the State of California
11 through, *inter alia*, a mailing address at 8605 Santa Monica Boulevard, PMB 44698,
12 West Hollywood, CA 90069.

13. Upon information and belief, and at all times relevant hereto,
14 Defendant Smooche was the alter ego of Defendant Otterloo, and in doing the things
15 alleged herein, Defendant Otterloo was acting at least in part within the course and
16 scope of alter ego status.

18. Upon information and belief, there exists such a unity of interest and
19 ownership between Otterloo on the one hand, and Smooche on the other hand, that
20 the individuality and separateness of these Defendants have ceased to exist.

21. Upon information and belief, despite the formation of the company
22 existence of Smooche, Smooche and Otterloo should, in reality, be legally treated
23 as one and the same because among other facts:

24. a. Smooche was completely dominated and controlled by Otterloo,
25 who personally committed the wrongdoings and violated the laws
26 as set forth in this Complaint, and who has hidden behind the
27 Smooche company to perpetrate unlawful and improper conduct
28 resulting in significant damage to Plaintiff.

- b. Upon information and belief, Otterloo and Smooche, while really one and the same, were segregated to appear as though separate and distinct for purposes of circumventing a statute, or accomplishing some other wrongful, unlawful or inequitable purpose.
 - c. Upon information and belief, Otterloo failed to comply with all requisite company formalities to maintain a legal and separate company existence for Smooche.
 - d. Upon information and belief, the business affairs of Otterloo, at all times relevant, were so mixed and intermingled with Smooche that the same cannot reasonably be segregated, and the same are in inextricable confusion. Smooche, at all times relevant hereto, was used by Otterloo as a mere shell and conduit for the conduct of his affairs. The recognition of the separate existence of Smooche on the one hand, and Otterloo on the other hand, from one another would not promote justice. The company existence of Smooche should be disregarded in equity and for the ends of justice, because such disregard is necessary to avoid fraud and injustice.
 - e. Upon information and belief, Smooche was not adequately capitalized.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1338 and 15 U.S.C. § 1121 because Plaintiff's claims arise under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* The Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367(a).

17. This Court may exercise personal jurisdiction over Defendant Smooche, because, upon information and belief, Smooche: (i) engages in continuous and systematic business activities in this Judicial District; and/or (ii)

1 regularly solicits business in California and this Judicial District and derives
 2 substantial revenue from interstate commerce; and/or (iii) has purposely directed
 3 substantial activities at the residents of California and this Judicial District and
 4 derives substantial revenue from interstate commerce; and/or (iv) has committed
 5 tortious acts (namely, the acts of trade dress infringement and unfair competition
 6 alleged herein) directed at persons located in this State and this Judicial District.

7 18. Upon information and belief, Smooche operates an e-commerce store
 8 at www.smooche.com, where Smooche offers, sells, and distributes products that
 9 infringe Plaintiff's distinctive trade dress to persons located in this State and
 10 Judicial District.

11 19. This Court may exercise personal jurisdiction over Defendant,
 12 Otterloo because, upon information and belief, Otterloo personally (i) engages in
 13 continuous and systematic business activities in this Judicial District; and/or (ii)
 14 regularly solicits business in California and this Judicial District and derives
 15 substantial revenue from interstate commerce; and/or (iii) has purposely directed
 16 substantial activities at the residents of California and this Judicial District and
 17 derives substantial revenue from interstate commerce; and/or (iv) has committed
 18 tortious acts (namely, the acts of trade dress infringement and unfair competition
 19 alleged herein) directed at persons located in this State and this Judicial District.

20 20. Venue in this District is proper under 28 U.S.C. §§ 1391(c) and
 21 1400(a).

FACTS COMMON TO ALL COUNTS

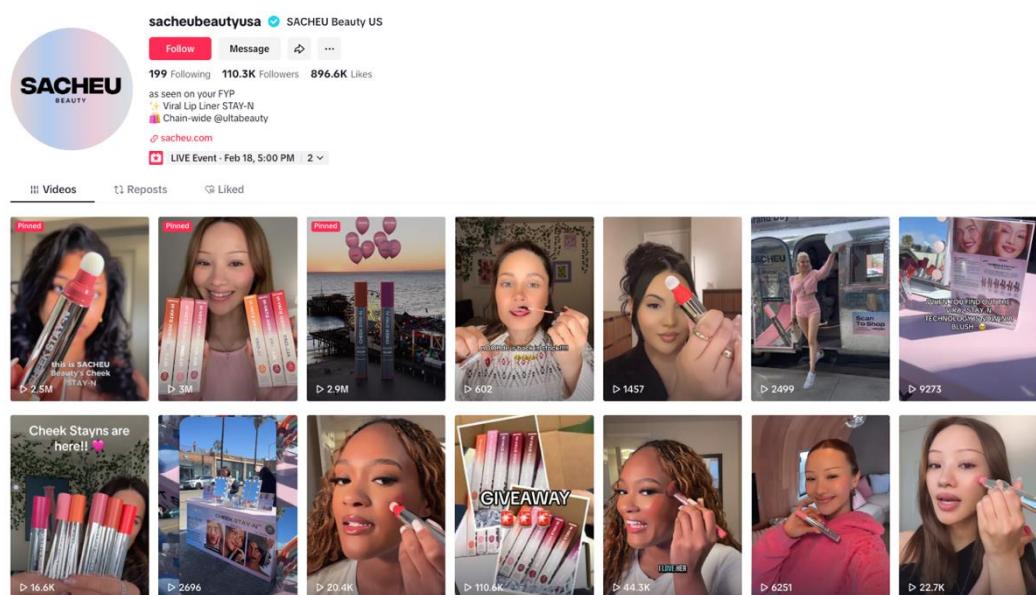
A. Plaintiff and Its Valuable Intellectual Property Rights

22
 23 21. Sacheu is a future-looking millennial and gen Z-oriented beauty and
 24 wellness consumer brand that is disrupting the industry with its innovative and
 25 technology-based tools, skincare, and makeup products. Founded in 2020 by social
 26 media influencer Sarah Cheung and backed by the beauty incubator firm, Gloss
 27
 28

1 Ventures, Sacheu has quickly gained recognition for its unique formulations and
 2 game-changing beauty tools.

3 22. Sacheu's cosmetic and beauty products are sold throughout the United
 4 States by retailers in over 1,400 brick and mortar stores, including Ulta Beauty and
 5 Urban Outfitters, through popular e-commerce platforms such as Amazon and
 6 TikTok Shop, and through Sacheu's dedicated e-commerce website,
www.sacheu.com.

7 23. Plaintiff advertises, markets, and promotes its products through
 8 numerous channels, including but not limited to its social media pages, which have
 9 amassed substantial followings, including over 110,000 followers on TikTok and
 10 over 91,000 followers on Instagram:



11 24. Sacheu has invested considerable resources in the marketing and
 12 promotion of its products, including partnering with various influencers and
 13 celebrities who create digital content for social media showcasing the Sacheu brand,
 14 its innovative products, and its distinctive product packaging.

15 25. Sacheu's affiliate-produced content has been pivotal in its social media
 16 strategy, working with over 100,000 affiliates to generate awareness for the brand

1 and its products. This has led a large majority of Sacheu's sales to be generated
2 online, including through its direct-to-consumer website, TikTok Shop, and
3 Amazon. Sacheu's online sales volume is so great that in the second full week of
4 January 2025, Sacheu was Amazon's tenth highest performing beauty and personal
5 care brand.

6 *i. Plaintiff's Lip Liner STAY-N Trade Dress Rights*

7 26. In 2023, Sacheu gained viral success with the launch of its Lip Liner
8 STAY-N ("Lip Liner STAY-N"), a peel-off lip liner stain that provides long-
9 lasting, smudge-proof color. A photo depicting the product is reproduced herein:



25 27. The overall appearance of the Lip Liner STAY-N product packaging,
26 as reflected in the above image, includes at least the following facially aesthetic,
27 non-functional features, the combination and unique, arbitrary arrangement of
28 which creates a non-functional and inherently distinctive trade dress (the "Lip Liner

1 STAY-N Trade Dress”):

- 2 • a two-piece tubular container consisting of a flat-bottomed cylindrical base
3 piece and a cylindrical screw off cap, both appearing silver foil in finish and
4 color;
- 5 • a trademark appearing vertically in white bold font, placed in the middle of
6 the tubular container, set off against the silver foil background of the base
7 piece;
- 8 • a product description appearing in white font, placed in the bottom third of
9 the base piece and set off against its silver foil background; and,
- 10 • a thin colored stripe placed laterally just above the bottom of the base piece,
11 spanning the circumference of the tube.

12 28. The combination and unique, arbitrary arrangement of these features
13 create a distinctly clean, modern, and fresh trade dress that is a departure from the
14 trade dress of traditional lip liner and lip liner stain products, and thus constitutes
15 an inherently distinctive, protectable trade dress.

16 29. Sacheu has filed U.S. Trademark Application Serial No. 99/056,289
17 with the US PTO seeking registration of the Lip Liner STAY-N Trade Dress.

18 30. Additionally, Sacheu has also incurred time, money and effort to
19 secure registered patent protection for its important Lip Liner STAY-N product,
20 including seeking to protect the product’s unique utilitarian features and functional
21 benefits through the filing of utility patent applications in the United States, Taiwan
22 and South Korea.

23 31. Since its launch, the innovative peel-off formulation and distinctive
24 silver foil packaging design became a sensation on social media, driving widespread
25 consumer interest—drawing in over 800 million views on TikTok—and securing
26 retail partnerships, including availability at the leading national beauty retailer Ulta
27 Beauty.

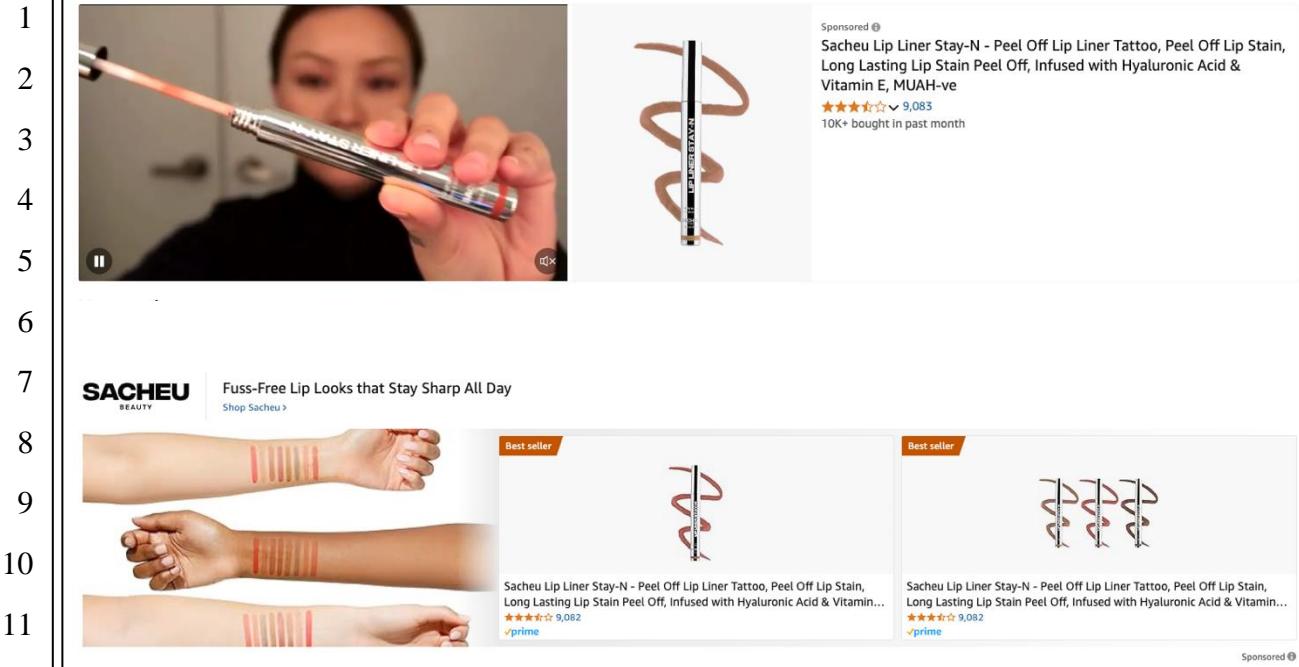
28 32. Celebrities like Billie Eilish have endorsed the Lip Liner STAY-N as

1 a must-have product, further solidifying the marketplace goodwill of Sacheu and
 2 the Lip Liner STAY-N as a recognized and influential brand with a reputable
 3 product in the beauty industry:



21 33. The innovative peel-off formulation and distinctive silver foil
 22 packaging design of Sacheu's Lip Liner STAY-N product has received industry
 23 praise and coverage from publications such as Hypebae, Byrdie, POOSH, Pop
 24 Sugar, and more.

25 34. Plaintiff has made substantial expenditures to promote its Lip Liner
 26 STAY-N product, including paid advertising and digital marketing campaigns.
 27 Plaintiff's digital advertising prominently features images of the Lip Liner STAY-
 28 N Trade Dress:



13 35. Plaintiff's Lip Liner STAY-N has been highly commercially
14 successful. Sacheu has sold a substantial number of units of the Lip Liner STAY-N
15 since its launch in 2023, with the product prevailing as the top-selling lip liner on
16 Amazon for over a year.

17 36. As a result of its advertising, sales success, and third-party recognition,
18 and extensive and continuous use since February 2023, the Lip Liner STAY-N
19 Trade Dress has acquired strong secondary meaning, such that in the minds of the
20 relevant consumer, the primary significance of the trade dress is to identify the
21 source of the product rather than the product itself.

22 37. The Lip Liner STAY-N Trade Dress is not functional. The Lip Liner
23 STAY-N Trade Dress, which consists of the combination and unique, arbitrary
24 arrangement of its individual elements, is not essential to the use or purpose of the
25 lip liner product, does not affect the quality or cost of the product, and does not
26 reduce manufacturing costs or lower consumer retail prices for lip liners, and its
27 exclusive use by Plaintiff does not place competitors at a non-reputation-related
28 commercial disadvantage.

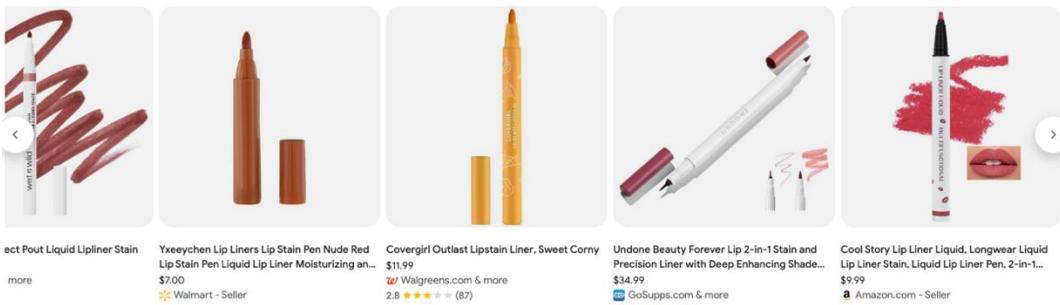
1 38. There are an infinite number of alternate package designs and color
 2 schemes available for lip liner—and even lip liner stain—as evidenced by the wide
 3 array of lip liner and lip liner stain products available in the marketplace that do not
 4 infringe Plaintiff's Lip Liner STAY-N Trade Dress. The images below show a small
 5 sampling of such alternative package designs:



e.l.f. Cream Glide Lip Liner \$2.00 Ulta Beauty & more Nearby, 1mi 30-day returns 4.7 ★★★★★ (2.9K)	Charlotte Tilbury Lip Cheat Lip Liner \$25.00 Sephora & more Nearby, 1mi Free 30-day returns 4.6 ★★★★★ (9.1K)	Laura Geller New York Modern Classic Lip Liner Luxurious Creamy Long Lasting Li... \$11.34 \$24 Laura Geller & more Free delivery on \$40+ Free 30-day returns 4.3 ★★★★★ (737)	AOAZXBB 12 Colors Lip Liner Set Lip Liner Pencil Natural Nude Brown Matte Lip... \$7.99 \$10 Amazon.com - Seller 30-day returns	Jones Road The Lip Pencil \$24.00 Jones Road & more Free delivery on \$85+ 30-day returns 4.4 ★★★★★ (2.3K)
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Liquid lip liner stains

These lip liner stains have a liquid formula and typically come with an applicator similar to a felt-tip pen. They offer precise application and good staying power.



ii. Plaintiff's Right to Use Sarah Cheung's Name and Likeness

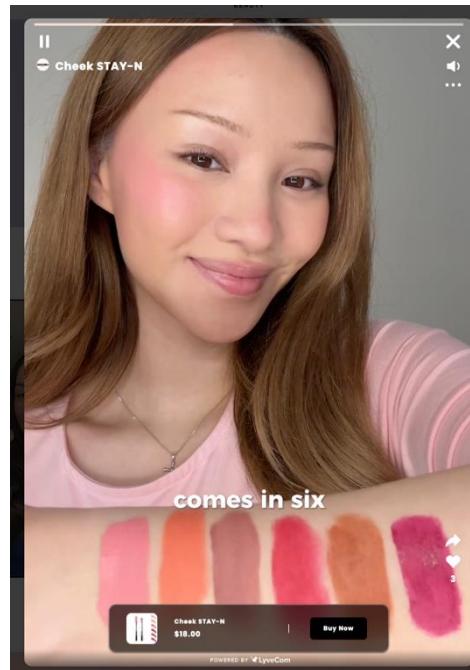
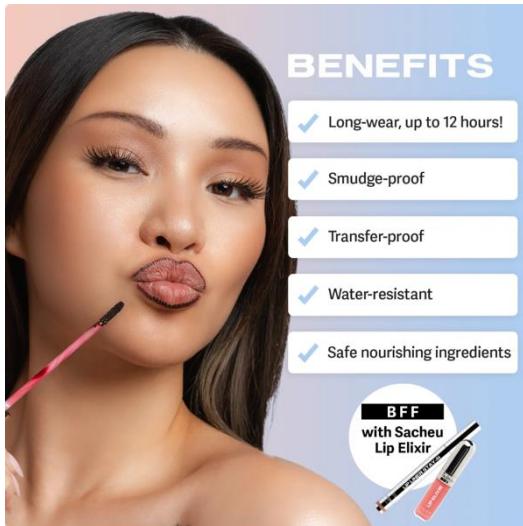
21 39. Sacheu has the perpetual, irrevocable, exclusive right and license to
 22 use Sarah Cheung's image and likeness in connection with the production,
 23 advertising, marketing, promotion, and sale of skincare products, beauty tools and
 24 accessories, and color cosmetics products, by virtue of several agreements entered
 25 into by Sacheu and Third Act Ventures f/s/o Sarah Cheung (the "Agreements").

26 40. Pursuant to the Agreements, Sacheu has the right to assert claims
 27 against third parties for the unauthorized commercial reproduction or use of

1 Cheung's name and or likeness, on Cheung's behalf.

2 41. Pursuant to the Agreements, Sacheu regularly produces and distributes
 3 content using Cheung's name and/or likeness in connection with the advertising,
 4 promotion, and sale of Sacheu's products including the Lip Liner STAY-N.

5 42. Representative samples of the content Sacheu produces and distributes
 6 using Cheung's name and likeness, in connection with the production, advertising,
 7 marketing, promotion, and sale of Sacheu products are below:



21 43. As the founder of Sacheu, Cheung's name, image, and likeness are
 22 highly connected to the Sacheu brand and Sacheu's beauty products, including the
 23 Lip Liner STAY-N, in the minds of consumers.

24 **B. Defendants' Acts of Infringement and Unfair Competition**

25 *i. Defendants' Reproduction of the Lip Liner STAY-N Trade Dress*

26 44. Upon information and belief, Defendants are engaged in
 27 manufacturing, offering for sale, selling, and distributing to consumers throughout
 28 the United States, including in the State of California and this District, at least the

1 following makeup products that infringes Plaintiff's Lip Liner STAY-N Trade
2 Dress: Stick & Stay Peel-off Lip Stain (the "Infringing Product"):



16 45. Defendants sell the Infringing Product to consumers within the State
17 of California and this District through Smooche's e-commerce website,
18 www.smooche.com.

19 46. As reflected in the images below, the Stick & Stay Peel-off Lip Stain
20 product packaging copies the Lip Liner STAY-N Trade Dress as expressed in at
21 least the following features:

- 22 • a two-piece tubular container consisting of a flat-bottomed cylindrical base
23 piece and a cylindrical screw off cap, both appearing silver foil in finish and
24 color;
- 25 • a trademark appearing vertically in white bold font, placed in the middle of
26 the tubular container, set off against the silver foil background of the base
27 piece;
- 28 • a product description appearing in white font, placed in the bottom third of

- 1 the base piece and set off against its silver foil background; and,
- 2 • a thin colored stripe placed laterally just above the bottom of the base piece,
- 3 spanning the circumference of the tube.

4 ***Side-by-side Comparison of Parties' Products' Trade Dresses***



23 47. As a result of these similarities, the packaging of Defendants' Stick &
 24 Stay Peel-off Lip Stain is confusingly similar to Plaintiff's Lip Liner STAY-N
 25 Trade Dress in all respects.

26 48. Upon information and belief, Defendants' Stick & Stay Peel-off Lip
 27 Stain is the same type of good as Plaintiff's Lip Liner STAY-N product, directly
 28 competes with Plaintiff's Lip Liner STAY-N product, and appeals to the same

1 classes of consumers as Plaintiff's Lip Liner STAY-N product.

2 49. Upon information and belief, Defendants' aforementioned use of the
3 Stick & Stay Peel-off Lip Stain product packaging commenced after Plaintiff's first
4 use in commerce of the Lip Liner STAY-N Trade Dress throughout the United
5 States and in the State of California.

6 50. Upon information and belief, and as the similarities between the
7 parties' packaging designs shown and described *supra* plainly show, Defendants
8 intentionally copied Plaintiff's Lip Liner STAY-N Trade Dress when designing the
9 packaging of the Stick & Stay Peel-off Lip Stain (the "Infringing Trade Dress").

10 51. Upon information and belief, Defendants' use of Plaintiff's Lip Liner
11 STAY-N Trade Dress has already caused actual confusion among consumers, who
12 have mistakenly believed that Smooche's Infringing Products *are* in fact Plaintiff's
13 products. This actual confusion is evidenced by, *inter alia*, Instagram direct
14 messages with consumers inquiring as to whether Smooche advertisements and lip
15 liner product therein were "infringement(s)?"

16 52. Plaintiff has never licensed or authorized Defendants to use Plaintiff's
17 Lip Liner STAY-N Trade Dress in any manner, including but not limited to in
18 connection with the Infringing Product.

19 53. Defendants' Infringing Product has not been licensed, authorized,
20 sponsored, endorsed, or approved by Plaintiff. Defendants are not associated,
21 affiliated, or connected with Plaintiff, or licensed, authorized, sponsored, endorsed,
22 or approved by Plaintiff.

23 54. Upon information and belief, Defendants' aforementioned use of the
24 Infringing Trade Dress in connection with the manufacture, offering for sale, sales,
25 distribution, advertising, marketing, and promoting of the Infringing Product has
26 been directed at consumers throughout the United States, including consumers in
27 the State of California and this District.

28 55. The manufacture, offering for sale, sales, distribution, advertising,

1 marketing, and promoting of Defendants' Infringing Product, and use of the
2 Infringing Trade Dress in connection therewith, engaged in and/or knowingly
3 facilitated by Defendants, is likely to deceive, confuse, and mislead actual and
4 prospective purchasers before, during, and after purchase into falsely believing that
5 the Infringing Product is manufactured by, licensed by, authorized by, or otherwise
6 approved by Plaintiff. As such, Defendants' actions are likely to cause initial
7 interest, point-of-sale, and post-sale confusion, to the irreparable harm and
8 detriment of Plaintiff and the substantial goodwill it has developed in its Lip Liner
9 STAY-N Trade Dress.

10 56. Upon information and belief, Defendants had actual knowledge of
11 Plaintiff's Lip Liner STAY-N Trade Dress and Plaintiff's rights with respect thereto
12 when they began the manufacture, offering for sale, sales, distribution, advertising,
13 marketing, and promoting of the Infringing Product and use of the Infringing Trade
14 Dress in connection therewith.

15 57. Upon information and belief, Defendants were aware or should have
16 been aware that the aforementioned use of the Infringing Trade Dress in connection
17 with the manufacture, offering for sale, sales, distribution, advertising, marketing,
18 and promoting of the Infringing Product, would likely cause confusion among
19 consumers as to the source, sponsorship, or affiliation of the Infringing Product.

20 58. Upon information and belief, Defendants knowingly, willfully,
21 intentionally, and maliciously adopted and used the Infringing Trade Dress for use
22 on and in connection with the Infringing Product with the specific intent and
23 purpose of misleading and deceiving consumers into believing that the Infringing
24 Product is licensed or authorized by, or emanates from, Plaintiff, and thereby free-
25 riding and trading on the substantial marketplace goodwill and reputation of
26 Plaintiff embodied in Plaintiff's Lip Liner STAY-N Trade Dress.

27 59. Defendants have acted in bad faith, with malicious intent, and in
28 knowing disregard of Plaintiff's rights in and to Plaintiff's Lip Liner STAY-N

1 Trade Dress, with the intent of free-riding on the substantial marketplace reputation
2 and goodwill associated with Plaintiff's Lip Liner STAY-N Trade Dress.

3 60. The likelihood of confusion, mistake, and deception caused by the
4 above-described misconduct of Defendants is causing irreparable harm to the
5 goodwill symbolized by Plaintiff's Lip Liner STAY-N Trade Dress.

6 61. Upon information and belief, by virtue of its above-described
7 misconduct, Defendants have made substantial profits and gains to which they are
8 not entitled in law or equity.

9 62. Intervention of this Court is required to put a stop to Defendants'
10 infringing activities, protect the reputation and marketplace goodwill of Plaintiff
11 and Plaintiff's Lip Liner STAY-N Trade Dress from further harm, and prevent
12 further consumer confusion, by enjoining Defendants from engaging in further
13 sales, distribution, advertising, marketing, and promoting of the Infringing Product
14 and other unauthorized, infringing use of Plaintiff's Lip Liner STAY-N Trade
15 Dress.

16 ***ii. Defendants' Unauthorized Use of Cheung's Name and Likeness***

17 63. Making matters worse, Defendants are not only selling an identical
18 type of peel-off lip liner stain product packaged in product packaging confusingly
19 similar to that of Sacheu's Lip Liner STAY-N, Defendants have also knowingly
20 and intentionally used Cheung's image and likeness in connection with its
21 advertising, promotion, and sale of the Infringing Product, without Sacheu's or
22 Cheung's consent. A non-exhaustive representative sample of Defendants'
23 unauthorized use of Cheung's image and likeness to promote its Infringing Product
24 is reproduced below:

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15 64. Given the extreme degree of similarity of the parties' product
16 packaging designs and Defendants' blatant use of Cheung's image and likeness in
17 its promotional content, it is clear that Defendants deliberately and purposely
18 developed a product and marketing scheme intended to cause consumer confusion
19 with Sacheu and its products and marketing, in order to benefit from the substantial
20 marketplace goodwill that Cheung, Sacheu, and its Lip Liner Stay-N Trade Dress
21 have developed.

22 65. Defendants' illicit misconduct, including use of Cheung's image and
23 likeness in its promotional content, is causing irreparable harm to Sacheu's
24 goodwill, its Lip Liner STAY-N sales, and Cheung's reputation.

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FIRST CLAIM FOR RELIEF

**Federal Trade Dress Infringement,
False Designation of Origin and Unfair Competition
(15 U.S.C. § 1125(a))**

66. Plaintiff repeats and reincorporates the allegations contained in the preceding paragraphs as though set forth in full herein.

8 67. Defendants' unauthorized use of the Infringing Trade Dress has caused
9 and is likely to cause confusion, deception, and mistake by creating the false and
10 misleading impression that the Infringing Product is manufactured or distributed by
11 Plaintiff, or is affiliated, connected, or associated with Plaintiff, or has the
12 authorization, sponsorship, endorsement, or approval of Plaintiff.

13 68. Defendants have used false designations of origin in violation of 15
14 U.S.C. § 1125(a). Defendants' illicit activities have caused and, unless enjoined by
15 this Court, will continue to cause a likelihood of confusion and deception among
16 members of the trade and public, and, additionally, injury to Plaintiff's goodwill
17 and reputation as symbolized by Plaintiff's Lip Liner STAY-N Trade Dress, for
18 which Plaintiff has no adequate remedy at law.

19 69. Defendants' actions demonstrate intentional, willful, and malicious
20 intent to trade on the goodwill associated with Plaintiff's Lip Liner STAY-N Trade
21 Dress to the substantial and irreparable injury of Plaintiff.

22 70. Because Defendants have caused, and are likely to continue causing,
23 substantial injury to the public and to Plaintiff, and because this is an exceptional
24 case, Plaintiff is entitled to injunctive relief and to recover Defendants' profits,
25 actual damages, enhanced profits and damages, costs, and reasonable attorneys'
26 fees under 15 U.S.C §§ 1125(a), 1116, and 1117.

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SECOND CLAIM FOR RELIEF

**Trade Dress Infringement, Unfair Competition
& Misappropriation Under Common Law**

71. Plaintiff repeats and reincorporates the allegations contained in the preceding paragraphs as though set forth in full herein.

72. Defendants' illicit activities with respect to Plaintiff's Lip Liner STAY-N Trade Dress alleged herein constitute trade dress infringement, unfair competition, and misappropriation of Plaintiff's goodwill under the common law of the State of California.

73. Defendants are directly liable for their illicit activities with respect to Plaintiff's Lip Liner STAY-N Trade Dress alleged herein.

74. Defendants' illicit activities with respect to Plaintiff's Lip Liner STAY-N Trade Dress alleged herein have, at times relevant to this action, been willful.

75. As a direct and proximate result of Defendants' illicit activities with respect to Plaintiff's Lip Liner STAY-N Trade Dress alleged herein, Plaintiff has been and, unless Defendants' illicit activities with respect to Plaintiff's Lip Liner STAY-N Trade Dress are enjoined by this Court, will continue to be damaged and irreparably harmed.

76. Plaintiff has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

77. Plaintiff repeats and reincorporates the allegations contained in the preceding paragraphs as though set forth in full herein.

78. Upon information and belief, by using the Infringing Trade Dress, a confusingly similar imitation of Plaintiff's Lip Liner STAY-N Trade Dress, in

1 commerce without consent or authorization of Plaintiff, and particularly by
2 engaging in such use concurrently with unauthorized use of the image and likeness
3 of Cheung—who is Sacheu’s founder, has granted a perpetual license to Sacheu to
4 use her image and likeness to promote its beauty products, and whose image and
5 likeness frequently appears in marketing and promotional material for Sacheu’s Lip
6 Liner STAY-N—in marketing, promotion, and sales of the Infringing Product,
7 Defendants are knowingly and willfully confusing consumers by creating the false
8 and misleading impression that Defendants’ Infringing Product emanates from, or is
9 otherwise authorized by, sponsored by, affiliated with, or connected to Plaintiff.

10 79. Upon information and belief, Defendants’ deliberate use of the Lip
11 Liner STAY-N Trade Dress and Cheung’s image and likeness in connection with
12 its marketing, advertising, promotion, offering for sale, and/or sale of its Infringing
13 Product, was and continues to be done in bad faith and with the intent to unfairly
14 benefit from the expense, time, effort and labor expended by Plaintiff in developing
15 and promoting the Sacheu brand and Lip Liner STAY-N Trade Dress.

16 80. By reason of the foregoing, Defendants’ conduct constitutes violation
17 of the California Unfair Business Practices Act, Cal. Bus. & Prof. Code, §§ 17200
18 *et seq.*

19 81. Defendants’ actions were deliberate, willful, and in conscious
20 disregard of Plaintiff’s rights.

21 82. Defendants’ conduct as alleged above has caused and will continue to
22 cause Plaintiff to suffer irreparable injury, for which it has no adequate remedy at
23 law.

24 83. As a result of Defendants’ conduct in violation of the California Unfair
25 Business Practices Act, Cal. Bus. & Prof. Code, §§ 17200 *et seq.*, Plaintiff is entitled
26 to all available relief provided for thereunder, including, without limitation,
27 permanent injunctive relief.

28

FOURTH CLAIM FOR RELIEF

Right of Publicity (Cal. Civil Code § 3344 *et seq.*)

84. Plaintiff repeats and reincorporates the allegations contained in the preceding paragraphs as though set forth in full herein.

85. Upon Information and belief, Defendants are knowingly and willfully using Cheung's photograph and likeness for a commercial purpose, in connection with the advertising and sale of the Infringing Product, without consent or authorization by Plaintiff.

86. Defendants' use of Cheung's photograph and likeness has caused reputational and financial harm to Plaintiff and Cheung.

87. By reason of the foregoing, Defendants' conduct constitutes violation of California's Statutory Right of Publicity Cal. Civ. Code § 3344 *et seq.*

88. Defendants' actions were deliberate, willful, and in conscious disregard of Plaintiff's rights.

89. Defendants' conduct as alleged above has caused and will continue to cause Plaintiff to suffer irreparable injury, for which it has no adequate remedy at law.

90. As a result of Defendants' conduct in violation of California's Statutory Right of Publicity Cal. Civ. Code § 3344 *et seq.*, Plaintiff is entitled to all available relief provided for thereunder, including, without limitation, punitive damages, attorney's fees, and permanent injunctive relief.

FIFTH CLAIM FOR RELIEF

Right of Publicity Under Common Law

91. Plaintiff repeats and reincorporates the allegations contained in the preceding paragraphs as though set forth in full herein.

92. Upon Information and belief, Defendants are knowingly and willfully using Cheung's voice, image, and likeness for a commercial purpose, in connection with the advertising and sale of the Infringing Product, without consent or authorization by Plaintiff.

93. Defendants' use of Cheung's voice, image, and likeness has caused reputational and financial harm to Plaintiff and Cheung.

94. By reason of the foregoing, Defendants' conduct constitutes violation of the common law right of publicity in the State of California.

95. Defendants' actions were deliberate, willful, and in conscious disregard of Plaintiff's rights.

96. Defendants' conduct as alleged above has cause and will continue to cause Plaintiff to suffer irreparable injury, for which it has no adequate remedy at law.

97. As a result of Defendants' conduct in violation of the common law of the common law right of publicity of the State of California, Plaintiff is entitled to all available relief provided for thereunder, including, without limitation, punitive damages, attorney's fees, and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. Preliminarily and permanently enjoining and restraining Defendants, Defendants' directors, officers, agents, servants, employees, subsidiaries, affiliates, and all persons and entities in active concert or participation with, through, or under any of the foregoing:

1. From imitating, copying, or otherwise making unauthorized use of Plaintiff's Lip Liner STAY-N Trade Dress, any unauthorized colorable imitation of Plaintiff's Lip Liner STAY-N Trade Dress, or any other trade dress confusingly

1 similar to Plaintiff's Lip Liner STAY-N Trade Dress, in connection with the
2 manufacture, importation, promotion, marketing, advertising, display, sale, offering
3 for sale, production, circulation or distribution of any good or service;

4 2. From committing any acts of unfair competition and/or creating
5 a false designation or origin, false description, or false representation with respect
6 to Plaintiff's Lip Liner STAY-N Trade Dress;

7 3. From committing any acts of unfair competition by falsely
8 passing off any goods or services as authorized by, associated with, sponsored by,
9 endorsed by, affiliated with, related to, or otherwise connected to Plaintiff, or
10 inducing or enabling others to falsely pass off any goods or services as authorized,
11 associated with, sponsored by, endorsed by, affiliated with, related to, or otherwise
12 connected to Plaintiff;

13 4. From manufacturing, importing, exporting, distributing,
14 circulating, selling, offering for sale, advertising, marketing, promoting or
15 displaying any product packaging bearing Plaintiff's Lip Liner STAY-N Trade
16 Dress, any unauthorized colorable imitation Plaintiff's Lip Liner STAY-N Trade
17 Dress, or any trade dress confusingly similar to Plaintiff's Lip Liner STAY-N Trade
18 Dress;

19 5. From using in any manner any packaging, labels, signs,
20 literature, display cards, or other packaging, advertising, marketing, or promotional
21 materials (physical and/or digital), or other materials (physical and/or digital)
22 bearing images of Plaintiff's Lip Liner STAY-N Trade Dress, any unauthorized
23 colorable imitation of Plaintiff's Lip Liner STAY-N Trade Dress, or any other trade
24 dress confusingly similar to Plaintiff's Lip Liner STAY-N Trade Dress, in
25 connection with any of Defendants' goods or services;

26 6. From making any statements on advertising, marketing, or
27 promotional materials for any of Defendants' goods or services which are false or
28 misleading as to being an authorized distributor or seller of goods or services under

1 Plaintiff's Lip Liner STAY-N Trade Dress, any unauthorized colorable imitation of
2 Plaintiff's Lip Liner STAY-N Trade Dress, or any trade dress confusingly similar
3 to Plaintiff's Lip Liner STAY-N Trade Dress;

4 7. From making any statements on advertising, marketing, or
5 promotional materials for any of Defendants' goods or services which are false or
6 misleading as to source or origin;

7 8. From committing any acts of trade dress infringement, unfair
8 competition, or false designation of origin calculated to cause members of the trade
9 or purchasing public to falsely believe that any of Defendants' goods or services
10 are Plaintiff's goods or services, or are authorized by, associated with, sponsored
11 by, endorsed by, affiliated with, related to, or otherwise connected to Plaintiff; and,

12 9. From using Sarah Cheung's voice, image, and likeness for a
13 commercial purpose, in connection with the advertising and sale of any product,
14 without consent or authorization by Plaintiff.

15 B. Ordering that Defendants recall from the trade, including any and all
16 distributors, wholesalers, dealers, retailers and all other third parties, any and all
17 unauthorized products bearing Plaintiff's Lip Liner STAY-N Trade Dress, any
18 unauthorized colorable imitation of Plaintiff's Lip Liner STAY-N Trade Dress, or
19 any other trade dress confusingly similar to Plaintiff's Lip Liner STAY-N Trade
20 Dress.

21 C. Ordering that Defendants deliver to Plaintiff any and all containers,
22 signs, packaging materials, printing plates, advertising, marketing, and promotional
23 materials, and any materials used in the preparation of any of the foregoing, which
24 in any way use or make reference to Plaintiff's Lip Liner STAY-N Trade Dress,
25 any unauthorized colorable imitation of Plaintiff's Lip Liner STAY-N Trade Dress,
26 or any other trade dress confusingly similar to Plaintiff's Lip Liner STAY-N Trade
27 Dress, and/or Sarah Cheung's voice, image, or likeness.

28

1 D. Ordering that Defendants, within thirty (30) days after service of notice
2 in entry of judgment or issuance of an injunction pursuant thereto, file with the
3 Court and serve upon Plaintiff's counsel a written report under oath setting forth
4 details of the manner in which Defendants have complied with the Court's order
5 pursuant to Paragraphs A-C above, pursuant to 15 U.S.C. § 1116.

6 E. Ordering Defendants to account for all gains, profits, and advantages
7 derived from its acts of infringement, false designation, unfair competition,
8 violation of Plaintiff's rights of publicity, and other violations of law alleged herein.

9 F. Ordering that Defendants be ordered to pay for Plaintiff's actual
10 damages according to proof and all profits realized by Defendants by reason of the
11 unlawful acts by Defendants alleged in this Complaint, increased to the maximum
12 extent permitted by law and justified by the circumstances of this case, pursuant to
13 15 U.S.C. § 1117 and Cal. Civ. Code § 3344.

14 G. Ordering that Defendants be ordered to pay to Plaintiff punitive and
15 exemplary damages as provided by California law.

16 H. Directing that Defendants be ordered to pay to Plaintiff its reasonable
17 attorneys' fees, costs and disbursements incurred herein in view of Defendants'
18 intentional and willful misconduct, pursuant to 15 U.S.C. § 1117.

19 I. Awarding Plaintiff pre-judgment and post-judgment interest to the
20 maximum extent provided by law.

21 J. Awarding Plaintiff such other and further relief as the Court may deem
22 just and proper.

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: February 26, 2025

Respectfully submitted,

MEISTER SEELIG & FEIN LLP

By: /s/ Ana C. Vásquez

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